

Women's Consent in Marriage: A Critical Study in Islamic Perspective

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Abstract

Man and woman jointly shoulder the sacred responsibility of building the human society. Interestingly, nature has gifted cross inclined emotions in each one and, then, each desires for the other to accomplish the chapter of his life in the shape of marriage. Such relation which will be lifelong cannot be possible without the conformity of thought, understanding, taste vision, belief and temper. As a rationale, mutual consent and harmony must be ascertained for such an important relation. In this paper, the freedom of choice in selection of life partner in respect of the girl is discussed in the light of documentary evidences of Qur'an and Hadith as well as circumstantial evidences of Sunnah. It has been brought forward that the commentators of holy Quran have expressed if someone gets married with girl without her consent/permission, then the Nikāḥ would not be permissible (Halal) and it would stand cancelled. Such kind of Nikāḥ does not establish legal conjugal relations nor does it prove the lineage and inheritance, accordingly. Similarly, there is a great deal of circumstantial evidences in the period of Prophet (SAW). Many cases had happened in which girls were married without their consent by their fathers and the cases were reported to the Prophet (SAW) he cancelled the Nikāḥ and assigned the decision of marriage to the girl. Therefore, it is proved in this paper that woman which are considered bind in our society now a days, Islam has never been bound them to such level which has been practiced, currently. The girls enjoy the freedom of choice to the large extent in selection of life partner similar to the boys. It is worth mentioning here that this paper is not aimed to the discussion of

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Ijbār-e- Nikāḥ, in which jurists differ nor its objective is determination of minimum age of a girl for marrying.

Introduction

Human is social by nature and he needs companions. Right from his birth, when he opens his eyes, he finds himself in a family. The ratio of social relations continues to expand with the time and he comes across to know society, tribe, village, town, city, nation and a cultural & political system as he grows up. Human is dependent upon others from birth to death in many fields such as food, clothing, lodging and survival etc. All that we can notice from the charismatic deeds of modern technological advancement, would have not been possible without the social behavioral attitudes of humanism, therefore, claiming that human is a social animal or human is social by nature is a quite agreeable fact.

Before the rise of Islam, woman was considered as a part of property; hence, woman was deprived of the inheritance.

Similarly, she was considered as the property of husband after marriage and, of father before marriage. In social practice, she had no right to exercise her power or will in her property.

Likewise, she did not have any privilege about her choice in marriage and even, she was not allowed to marry with her choice.

In the era of ignorance (before the dawn of Islam) the girl had lower status than the boy and people used to feel anxious over the birth of baby girl; The Holy Quran states this:

“And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief, He hides himself from the people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.”¹

Meanwhile, some of them used to kill their daughters even buried them alive, to avoid facing the situation of anxiety and insult. This described in Quran also as:

“And when the girl [who was] buried alive is asked, for what sin she was killed.”²

The Holy Quran affirmed that Men and Women are both respectable:

“And We have certainly honored Bani Adam (the children of Adam) and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference”³

Hence, only men are not mentioned in this single word of “*Bani Adam*”, but, as per Arabic grammar's rule, when men and women are described collectively at the same time then it has to say “*Banoo Adam*” or “*Bani Adam*”. It is the case similar to *Bani Israel* which is mentioned in Holy Qur'an, it denotes both men & women who belong to the nation of Israel.

Man and woman are the two prime pillars of human society; each of them has its own identity as well as personality. They are shouldering the great responsibility of building the human society, jointly. The coordination of man and woman shapes the family. Interestingly, nature has gifted cross inclined emotions in each one and, then, each desires for the other to accomplish the chapter of his life. As an undeniable fact, a man cannot survive as a man without woman and vice versa. Keeping this basic fact in view, Islam has not appreciated the celibacy instead it has incited to live a marital life. The Guardians are directed to marry the marriageable boys and girls. The holy Qur'an directs:

And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing.”⁴

The Prophet (SAW) has termed living the marital life as equal to follow his footsteps and those who deviate are declared as non-followers.⁵ The guardians are warned to marry their children (well in time) if they commit some kind of sin (i.e. adultery) then its burden will be on the father.⁶ The youth are directly advised by the Prophet (SAW) apart from their guardians to be careful as: "O' class of youth, who of you have potential (to carry the burden) of marriage, he should marry".⁷ In the light of above of statements, the Islamic scholars described leading the marital life more beneficial than performing extra

obligatory actions.⁸

Discussion

Before going to discuss the issue of women's consent in marriages in detail, it is pertinent to present the objectives of marriage in Islam and Shariah terms used for expressing the wife - husband relation. If the said two fundamental points be kept in mind then the issue would be comprehended more effectively.

a. Objectives of Marriage:

In the light of Islamic teachings, the important objectives of marriage are preservation of human procreation, affection and tranquility. Almighty Allah has arranged the preservation of procreation of each living organism through creation of couple and the same manner is adopted for human procreation. The Holy Quran points at this objective, rhetorically.⁹ The second objective of marriage is affection between the spouses. Naturally, human beings have emotional instinct which keep them bind in love and affection. Wife loves husband and vice versa. Parents love children and in return they do so. The teacher loves students and they love him and so on. Islam does not inhibit this natural sentiment rather it develops it on the right way through the formation of family using the pure, virtuous and pious sentiments of love. The children get lesson of love and affection from the institution of home. Those who fail to gain sincerity and love from home, turn stranger in social circles of society. They do not love any one because they are not loved at home, resultantly; they are brought up selfish and greedy. Unfortunately, they tend to spread self-interests in society in whole of their lives as they do not have meaning of love, affection, sincerity and kindness.¹⁰

The third objective of marriages is tranquility of the spouses. Peace and satisfaction which a person feels inside the home with his life partner cannot be found elsewhere. A house filled with tranquility and love is not lesser than the paradise. The fountain head of this satisfaction and peace is the life partner, therefore, the Holy Qur'an hints at this incalculable wealth as:

“And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a

*people who give thought.”*¹¹

All aforementioned objectives can be achieved through the union of husband and wife. These objectives can be reached to the optimum level when the marital relation between the spouses is based on mutual understanding and love rather than coercion or compelling.

b. Shariah Terms for Expression of Wife-Husband Relation:

Number of terms could be suggested for the union of man and woman but the Holy Qur'an used the term "*Nikah*" for it. The literal meaning of *Nikah* is "to connect in such a manner to absorb each other like the drops of rain in the ground, or dissolve like sleep dissolve in eyes".¹²

The literal meanings of *Nikah* demand that relation of wife and husband should be similar to the dissolving of sleep in eyes. The couple should dissolve in the love of each other as drops of rain absorbs in grounds. Such relation who will be lifelong cannot be possible without the conformity of thought, understanding, taste vision, theories, belief and temper. As a rationale, mutual consent and harmony must be ascertained for such an important relation.

The second term which denotes the relation of wife and husband is *ziwaj*. In Arabic language, each relation (Masculine or feminine) is denoted by a specific word, e.g. separate term is used. Similarly, separate word has been used for the relation of sister, and so on. However, the relation of husband and wife is a unique one, for which a single term has been used for both husband & wife i.e. *zawj*. Here, in our society, woman is called "*zawja*" of a man while man is not called *zawj* of woman rather holy Qur'an used the term *zawj* for both spouses equally.¹³ It means companion and friend; hence husband and wife are companion of each other. From this part of view, meaning of *zawj* will be as complementary to each other because perfection of each one depends upon another one. Looking over any one of them will endanger the existence of the other. It can be comprehended from the instance of a bicycle, where damage of one wheel makes another one worthless as both wheels support each other. From this discussion (objectives of Marriage, philosophical perspective for adopting the terms of *nikah* as well as *zawj*), the importance of freedom of choice for both partners of marriage contract comes before us.

There are two main sources of Islamic Sharia i.e. Qur'an and Sunnah.

In the Holy Qur'an, woman's rights are described in many chapters, however, a particular chapter namely *Nis'a* (women), which is the second longest chapter of the Holy Qur'an, is revealed for elaborating the matters related to women folk. In this chapter, beliefs are directed as:

“O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness. For if you dislike them, perhaps you dislike a thing and Allah makes therein much good.”¹⁴

The commentators of Holy Quran have explained under this verse if someone gets married with an adult girl without her consent or permission then the *nikah* would not be permissible (*Halal*) as per Shariah and it would stand cancelled. Such kind of *nikah* does not establish legal conjugal relations nor does it prove the lineage and inheritance.¹⁵ The Holy Qur'an emphasized on avoiding the situations hurting the women to striatum (life) for them.¹⁶ It incited to raise the public sense to fulfill the marital obligations rather than binding the governments for implementation directly. The general public has been encouraged to care for the rights of their wives keeping the fear of Almighty Allah in their mind. In addition, government authorities are responsible to oversee efficiently and use authority where needed to overcome injustice.¹⁷

It comes clear in the light of objectives of *nikah*, philosophical meanings of *nikah* & *zawj* and directives of the Holy Qur'an that woman which are considered absolute bind in our society now a days, Islam has never been bound them to such level which has been practiced, currently.

The adult girls enjoy the freedom of choice to the large extent in selection of life partner similar to the adult boys. In case of *Nikah* (Marriage) consent or permission of adult girls has been made mandatory.

The second main source of religious information is Sunnah after the Holy Qur'an. In Shariah, the term of Hadith is used for the sayings of Prophet Muhammad (SAW) while Sunnah is a wider term than Hadith. Sunnah is related with the sayings, practices and situations where Prophet (SAW) remained silent over a specific matter. Therefore,

situational and evidential favor of Hadith is called Sunnah. We discuss the sayings of Prophet Muhammad (SAW) regarding the issue, firstly. The Prophet (SAW) says:

*“A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission.” The people asked, “O Allah's Apostle. How can we know her permission?” He said, “Her silence (indicates her permission)”*¹⁸

In the Muslim Sharif, the Prophet (SAW) has been reported to say as:

*“A woman without a husband (or divorced or a widow) must not be married until she is consulted, and a virgin must not be married until her permission is sought. They asked the Prophet of Allah (may peace be upon him): How her (virgin's) consent can be solicited? He (the Holy Prophet) said: That she keeps silence.”*¹⁹

In a third Hadith the Prophet (SAW) says:

*“A woman who has been previously married (Thayyib) has more right to her person than her guardian; and a virgin's father must ask her consent from her, her consent being her silence, At times he said: Her silence is her affirmation”*²⁰

In the all compilations of Hadith books, a large number of Hadith have been reported in the subject matter in continued manner. The Imam Bukhari has specified many chapters for this, so, a chapter is named as “Force Marriage is not Permissible”, second is titled as “Father etc cannot marry his daughter (virgin or not) except with her consent” and another is named as “when a daughter is married without her consent than her marriage is null and void”. All these traditions elaborate that Islam has never snatched the freedom of will from women rather consent is regarded mandatory. Father or any other guardian is not allowed to marry his adult daughter without her free will or consent. However, Islam has accepted silence or laugh of an adult girl before her father when she was asked about her choice or permission because the virgin ladies normally feel ashamed before father when asked about life partner. No guardian other than father can enjoy this privilege and the

adult girl will speak about her choice in such case. Similarly, if father asked about choice of marriage and the adult girl cried or laughed in insulting manner or remained silent but her face reddened due to rage and unpleasantness, then it would be equal to "Refusal".²¹

Regarding the subject under discussion, there is a great deal of circumstantial evidences of Sunnah other than sayings of Prophet (SAW). In the period of Prophet (SAW) many cases had happened in which girls were married without their consent by their father and the case was reported to the Prophet (SAW) he cancelled the *nikah* and assigned the decision of marriage on girl. In the following, some incidents are reported:

1. A virgin girl reported to Prophet (SAW) about her marriage without her consent by her father. The Prophet (SAW) authorized the girl to remain the marriage or nullify it.²²

Allama Muhammad bin Ismail Sina'ni (Died 1182H) writes under this incidence that this tradition proves that forcing the daughter by father for marriage is strictly prohibited, and so does for the guardians.

2. In Nisai Sharif it is described that a girl came to Hazrat Ayesha (RA) and reported that her father married her with his nephew while she hates him. Hazrat Ayesha (RA) advised her to wait for Prophet (SAW). When Prophet (SAW) arrived, she informed him and he authorized her to decide the fate of marriage. The girl said: I maintain the decision of my father but I would like to demonstrate that fathers have less authority in marrying their daughters.²³ In the Bukhari Sharif, the incidence of Khansa bin Khazam Ansariyya (RA) is reported in which she was married by her father and she was married before (i.e. she was a matron). She did not like this marriage, she reported to the Prophet (SAW) and he nullified the marriage.²⁴
3. The most interesting incidence in this regard is reported about companion of Prophet (SAW) Thabit bin Qais (RA). It is narrated that his wife came to Prophet and said that she had no objection over the character and manners of Thabit bin Qais but she did not like as a Muslim to cohabit with a man which she dislikes and to avoid fulfilling his due rights resulting in thanklessness or even

disbelief.²⁵ What was the cause of her hatred for her husband? In this regard, some causes are reported in the traditions of the Prophet (SAW) e.g. he used to punish her frequently which research scholars have preferred the view that he was very ugly as she negated any deficiency in his character and manner. She was so hostile from her husband that she could not adjust herself with him after cohabitation. She detested her husband from the first day of their marriage even to the level, as per narration of *Ibn-e-Maja*, she reported that if there were no fear of God, she would have spit out at his face? The Holy Prophet (SAW) did not ask for more explanation according to well-known traditions of the Prophet (SAW) nor did he ask for the cause of hatred. May be he had some knowledge about their issue in advance. The holy Prophet said “Are you ready to pay back the amount of dower which you had taken? She replied in yes, and then the Prophet (SAW) nullified the marriage..²⁶

The Qur'an and Sunnah have granted the right of abrogation of marriage when woman is not agreed upon it. If she finds herself coerced due to unavoidable circumstances and marriage contract occurs. It is natural that feeling of detestation develops in her mind and she fails to adjust with her husband in the life long journey. Obviously, these indications do not profess a satisfied marital life, therefore, the wife has the right to annul this contract. The authority for the aforesaid clause is the directives of the Holy Qur'an regarding the pacification of difference and clashes between the spouses. The Holy Qur'an directs:

“Now, if you apprehend that they would not maintain the limits set by Allah, then, there is no sin on them in what she gives up to secure her release. These are the limits set by Allah. Therefore, do not exceed them. Whosoever exceeds the limits set by Allah, then, those are the transgressors”..²⁷

Ibn Taimiyya (Died 728H) viewed in this regard as marrying the girl against her will is opposite to both Shariah and rational, in principal. Almighty Allah has not granted any kind of relaxation for guardians to force their daughters for a transaction of business, rent, accommodation dress and food etc. which she does not look herself.

Similarly, the guardian has no authority to force her for living with a man which she dislikes. The Almighty Allah has gifted love and affection between the spouses, and, if their relation begins with rage, and detestation, how the love and affection would be there?²⁸

Summary

Nikah (Marriage) is a relation which ties two persons in a knot for life and both have to deal with this knot till death. Therefore, Islam has founded this relation upon the mutual consensus of both parties along with their free will and coercion has prohibited. In the Hadith of Prophet (SAW), the consent and free will of girl has been termed mandatory, therefore, during the era of Prophet, those parents had not been encouraged who married their daughters against their will. Hence, Islamic teachings as well as nature of *nikah* both require that marriage should be conducted under the absolute consent of both parties. If members of society fail to comply with the moral regulations of Islam, then the government is responsible to do legislations for protecting the rights of the women as per explanations of Qur'an and Sunnah.

At the one side, Islam has made compulsory the consent of both parties while on the other the consultation and opinion of guardian or parents has been underlined. Certainly, as per teachings of Qur'an and Sunnah, the ultimate decision of marriage depends upon the free will and consent of both parties, however, less experiences of life and emotional inclinations of young age suggest that both parties should pay heed to the opinion of their parents/guardians to avoid any unfavorable situation in future.

Consultation and proper counseling with parents/guardians paves path for the long lasting durability of a relation. Therefore, they should seek consultation of their parents before going to enter this gorgeous decision because of their long experience and kindness towards their children. However, Islam has not forced to accept their decision or consultation because doing so would deprived the girl from her due right of free will of selecting the life partner which is against the Islamic injunctions and secondly, the objectives of *nikah* (marriage) could not materialize in its true essence.

Endnotes

¹ Al-Qur'an [16: 58-59]

² Ibid[81: 08-09]

³ Ibid [17: 70]

⁴ Ibid [24:32]

⁵ Muhammad bin Ismail Al-Bukhari, 1961, vol:2, p.757

⁶ Ismail bin Hussain bin Abdullah Al-Baihaqi, Hadith No.8145

⁷ Muhammad bin Ismail Al-Bukhari, 1961, vol:2, p.758

⁸ Molana Jameel Ahmad, Vol: 4 p, 18,

⁹ Al-Quran [2:233]

¹⁰ Prof. Syed Attaullah Hussaini, 1399 H, p.225

¹¹ Al-Qur'an [30:21]

¹² Syed Murtaza Hussaini Al-Zubaidi, 1976, vol: 16 p. 447

¹³ Pir Muhammad Karam Shah, 1978, vol: 1, p.330

¹⁴ Al-Qur'an [4:19]

¹⁵ Mufti Muhammad Shafi, *Maarif ul Qur'an*, 1982, vol:2 p.351-352

¹⁶ Al-Qur'an [65:6]

¹⁷ Mufti Muhammad Shafi, *Maarif ul Qur'an*, 1982, vol:2 p.286

¹⁸ Muhammad bin Ismail Al-Bukhari, 1961, vol:2, p.771

¹⁹ Muslim bin Hajjaj Al-Qushairi, *Saheeh Muslim*, Baab Istteezan un thyyib binnutiq walbikre bisokoot

²⁰ *Ibid.*

²¹ Umar Ahmad Usmani, *Fiqh ul Qur'an*, Vol:7, p.103

²² Sulaiman bin Ashath Abu Dawood Sajistani, *Sunan Abi Dawood*,2004, vol: 1, p. 302

²³ Ahmad bin Shoaib Al-Nassai, *Sunan Nassai* , 2004, vol: 2, p. 77

²⁴ Muhammad bin Ismail Al-Bukhar, 1961, vol:2, p. 771-772

²⁵ Ahmad bin Shoaib Al-Nassai, *Sunan Nassai*, vol:2 p.107

²⁶ *Ibid.*

²⁷ Al-Qur'an [02:229]

²⁸ Ahmad bin Taimiyya, *Majmooa Fatawa Shaykh ul Islam*, 2004, vol: 32, p.25

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